I allow the questions as framed subject to minor amendments. The proper question is this:

> Even if the evidence adduced by or on behalf of the plaintiffs is accepted *in toto* and is unrebutted or unexplained by the defendants, they have not succeeded in showing that they were entitled to the reliefs they are claiming because as a matter of law, they are not entitled to claim those reliefs.

For the above reasons the plaintiffs' objection is rejected and the defendants are allowed to raise the question which has been settled by me as a preliminary point of law for trial. I now invite Counsel to address me on costs.

S.I. RAJAH & ANOR.

v.

DATO MAK HON KAM & 11 ORS. (NO. 2)

HIGH COURT, KUALA LUMPUR
DATO' LIM BENG CHOON J.
[CIVIL SUIT NO. S7-22-599-1990]
27 AUGUST 1993

ADMINISTRATIVE LAW: Plaintiffs seeking declarations - Whether Court has jurisdiction and/or discretion to grant declaratory orders prayed for by the plaintiffs - Principles applicable to the grant of declarations - Consideration of O. 15 r. 12 Rules of the High Court 1980 and s. 41 Specific Relief Act 1950 - Whether plaintiffs entitled to ask for the declarations - Whether action was plaintiffs' personal action or representative action - Whether Court has jurisdiction to grant declarations sought by the plaintiffs - Consideration of s. 16 Societies Act 1966.

The plaintiffs instituted the suit and prayed for declaratory orders *inter alia* that the first to the ninth defendants were not and are not members of the People's Progressive Party (the PPP) and that their appointment as office bearers of the PPP be declared null and void and that the tenth and twelveth defendants having resigned from the posts to which they were elected, would cease to hold such posts in the PPP.

After the close of the plaintiffs case, the defendants applied for and obtained leave to raise a preliminary issue pursuant to O. 33 r. 2 of the Rules of the High Court 1980 (RHC 1980). (See [1994] 1 CLJ 207).

Counsel for the defendants contended that as the action is not a representative action under O. 15 r. 12 RHC 1980 but the plaintiffs personal action; they must show that their legal rights to any property have been or will be infringed, or that they have suffered loss of any office or deprivation of any status or interest pursuant to s. 41 of the Specific Relief Act 1950 which they had failed to do. Counsel further contended that the plaintiffs are not entitled to ask for the declarations by virtue of the provisions of the Societies Act 1966.

Counsel for the defendants, on the other hand, contended that the plaintiffs need not go under s. 41 of the Specific Relief Act 1950 for the declaratory orders but they could in fact rely on O. 15 r. 16 RHC 1980 to ask for the declarations. The Court, in the course of coming to its

decision, traced the legal development of the declaratory action.

Held:

[1] It is clear that s. 41 of the Specific Relief Act 1950 is not exhaustive of declaratory relief and a declaration can be sought and made under O. 15 r. 16 RHC 1980. In the circumstances the first contention of Counsel for the defendants cannot be sustained.

[2] A cursory reading of the plaintiffs' statement of claim is sufficient to show that there was nothing in it to indicate that this action was instituted as a representative action. Bearing in mind that the parties are bound by their pleadings and as the plaintiffs did not deem it fit to aver in their statement of claim that they were suing on their own behalf and on behalf of the remaining members of the PPP save the 11 members of the PPP who are the defendants in this action, it could not be said that this action was not in fact the plaintiffs' personal action.

[3] While it may well be that the a breach of the constitution of the PPP is not a personal matter of the officials or its members but of public law, the filing of the suit *per se* does not change this personal action into a representative action. If it were so, the grant of the declarations sought by the plaintiffs would not be binding on the PPP itself or any of the remaining members of the PPP who are not parties to the action.

[4] Upon a careful reading of the Societies Act 1966 it was clear that the legislators of the said Act intended to confer on the Registrar of Societies full power to deal with matters concerning the function and the administration of societies, including the appointment of office bearers of societies as well as disputes arising between members of a society and its office bearers, subject only to the supervisory power of the Minister for the time being charged with the responsibility of the registration of societies.

[5] As the jurisdiction of the Court to make declaratory orders may be restricted or ousted by statutory provisions giving exclusive jurisdiction to another person or tribunal in specified matters, in the circumstances of the case the Court has no jurisdiction to grant the three declarations sought by the plaintiffs in their statement of claim.

[6] The disputes set out in this action must be referred to the Registrar of Societies for his necessary action and as there is no longer any relief existing in this action, the writ and the statement of claim were rendered a nugatory and as such they must be removed from the Court file.

[7] The defendants should have raised the said issues before the trial of the case or at least at the commencement of the trial instead of causing the plaintiffs to incur unnecessary expenses in proceeding with the trial. In the circumstances each party should bear their own costs of the proceedings.

[Orders accordingly].

Cases referred to:

Ellis v. Duke of Bedford [1899] 1 Ch. 494 at 514 ***(refd)***
Dyson v. Attorney General [1911] 1 KB 410 ***(refd)***
Guaranty Trust Co. of New York v. Hannay & Co. [1915] 2 KB 536 ***(refd)***
Russian Commercial and Industrial Bank v. British Bank for Foreign Trade Ltd. [1921] 2 AC 438 ***(refd)***
Hanson v. Radcliffe Urban District Council [1922] 2 Ch. 490 @ 503 ***(refd)***
Ibeneweka v. Eqbuna [1964] 1 WLR 219 @ 225 ***(refd)***
Datuk Syed Kechik v. Government of Malaysia [1979] 2 MLJ 101 @ 107 ***(refd)***
Fischer v. Secretary of State for India [1899] 26 IA 16 (PC) ***(refd)***
Ramaraghava Reddy v. Seshu Reddy [1967] AIR SC 436 ***(refd)***
Tan Sri Haji Othman Saat v. Mohamed bin Ismail [1982] 2 MLJ 177 ***(refd)***
Government of Malaysia v. Lim Kit Siang [1988] 1 CLJ 219 / [1988] 2 MLJ 12 ***(refd)***
Coffer v. National Union of Seamen [1929] 2 Ch. 58 ***(cit)***
John v. Ress & Ors. [1969] 2 All ER 274 ***(cit)***
Markt & Co. Ltd. v. Knight SS. Co. Ltd. [1910] 2 KB pp. 1033, 1034 ***(refd)***
Campbell v. Thomson [1953] QB 445 ***(refd)***
North Estern Marine Engineering Co. v. Leeds Forge Co. [1906] 1 Ch. 324 @ 328 ***(refd)***
Blackburn v. Attorney-General [1971] 1 WLR 1037 ***(refd)***

Legislation referred to:

Societies Act 1966, s. 16
Specific Relief Act 1950, s. 41
Rules of the High Court 1980, O. 15 rr. 12, 16 O. 33 r. 2
Rules of the Supreme Court 1957, O. 25 r. 5
Code of Civil Procedure 1859, s. 15 (India)
Code of Civil Procedure 1877 O. 7 r. 7 (India)
Specific Relief Act 1877, s. 42 (now s. 34) (India)
Court of Chancery Procedure Act 1852, s. 50 (UK)
Finance Act (1909-1910) (UK)
Rules of the Supreme Court 1883, O. 25 r. 5 (UK)

Other sources referred to:

Declaratory Judgment by I. Zamir p. 15, 32
Supreme Court Practice 1988, O. 15/16/4

For the plaintiffs - Dominic Puthucherry; M/s. Skrine & Co. K.S. Dass; M/s. K. Sila Dass & Partners, Rejinder Singh; M/s. Ranjit Thomas & Kuala, M. Kayveas; M/s. M. Kayveas & Co.
For the defendants - Shahul Hameed; M/s. Albar Zulkifli & Yap, Pala; M/s. Durai & Associates

JUDGMENT

Lim Beng Choon J:
This suit was instituted by the two plaintiffs on 26 August 1989 in which they are praying *inter alia* for three declaratory orders:

(i) that the 1st to 9th defendants and each of them, were, at all material times, and are, not members of the People's Progressive Party of Malaysia ("the PPP"),
(ii) that the appointment of the 1st to the 9th defendants and each of them as office bearers of the PPP be declared null and void; and
(iii) that the 10th and 12th defendants and each of them having resigned from their respective posts to which they were elected at the Triennial Delegates Conference of the PPP would cease to hold their respective posts.

They are also praying for orders of Court to restrain each and everyone of the defendants from acting or holding out as office bearers and/or interfering with the affairs and/or from convening any meetings or extra-ordinary triennial delegates conference of the PPP. Finally they pray for an order of Court directing that in the interim the 1st plaintiff be appointed to attend to the day to day affairs of the PPP under the supervision of the Registrar of Societies or such other person or persons as may be appointed by the said Registrar.

On 28 August 1989 the plaintiffs made an application by way of an *ex parte* summons-in-chambers for an interim injunction to restrain each and everyone of the defendants from doing the things mentioned above. The application, however, was heard *inter partes* by me on 22 August 1991 and I granted the interim injunction prayed for subject to the usual order as regards to damages to be paid to the defendants should it be found subsequently that the said injunction should not have been granted. The grounds of my judgment in this interlocutory matter are set out in my written judgment of 22 October 1991 (See [1992] 1 CLJ 198).

The trial of the case commenced on 8 January 1992 and proceeded until 11 May 1993 when the plaintiffs closed their case. Thereupon Counsel for the defendants orally applied to this Court for leave to raise a preliminary issue pursuant to O. 33 r. 2 of the Rules of the High Court 1980 ("the RHC"). The preliminary issue as stated by the learned Counsel was this:

> On the undisputed facts before this Court are the plaintiffs entitled to seek the various prayers that have been prayed for in the statement of claim in view of the proviso to s. 41 of the Specific Relief Act 1950?

Counsel for the plaintiffs strenuously objected to the defendants' application made at this late stage and said that the said application was in fact an abuse of the process of the Court. Furthermore the learned Counsel quite rightly said that the plaintiffs were caught by surprise. I therefore adjourned the hearing until 13 May 1993 to enable Counsel for the plaintiffs to look up the law on the preliminary issue.

The matter was fully argued before me by Counsel of the respective parties on 13 May 1993. I do not propose to dwell on the arguments of Counsels as I have given a written judgment on this preliminary issue on 24 May 1993. Suffice it to state that Counsel for the defendants submitted that even if the Court were to look at the plaintiffs' case at its highest, in law the plaintiffs are not entitled to the reliefs asked for. Counsel also said that the facts relied on by the defendants in raising the preliminary issue were these:

1. As the 1st plaintiff is a bankrupt and not holding an official post in the PPP he therefore has no right to ask for the reliefs sought.
2. In any event based on their own pleadings both the plaintiffs are not entitled in law to pray for and to obtain the reliefs as set out in their statement of claim.

On the other hand Counsel for the plaintiffs argued *inter alia* that:

(1) The purported issue of law that the Counsel for the defendants has raised is not in fact an issue of law in that the statement of claim of 26 August 1989 raises matters based on antecendent events which took place in 1988 when the 1st plaintiff was not a bankrupt.
(2) The bankruptcy issue relates only to a procedural matter and would be relevant only when he sought to implement or execute any Court judgment.
(3) In any event the 1st plaintiff had at an interlocutory proceeding answered that he

would obtain sanction of the official assignee to proceed with the action. Having done so the defendants thereby allowed the trial of the case to be proceeded with without any objection.

On the grounds as set out in my written judgment of 24 May 1993 I allowed the defendants to raise the preliminary issue subject to my framing of the question to be raised on the said preliminary issue in this way:

> Even if the evidence adduced by or on behalf of the plaintiffs is accepted *in toto* and is unrebutted or unexplained by the defendants, they have not succeeded in showing that they were entitled to the reliefs they are claiming because as a matter of law, they are not entitled to claim those reliefs.

Counsel for the respective parties have filed in respective submissions on the preliminary issue and the relevant authorities in support thereof.

Shorn of the frills and trimmings of the arguments of Counsel, the issue posed to this Court is no more than this *viz* whether this Court has the jurisdiction and/or discretion to grant the declaratory orders prayed for by the plaintiffs. On the one hand Counsel for the defendants builds up the defendants' case on the contention that as this action is not a representative action under O. 15 r. 12 of the RHC but the plaintiff's personal action; they must show that their legal rights to any property have been or will be infringed, or that they have suffered loss of any office or deprivation of any status or interest pursuant to s. 41 of the Specific Relief Act 1950 which they have failed to do. In any case, so said Counsel, the plaintiffs cannot ask for the declarations by virtue of the Societies Act 1966 (Act 335). Counsel for the plaintiffs, on the other hand, rests the plaintiffs' case on the contention that the plaintiffs need not go under the said s. 41 for declaratory orders but can rely on O. 15 r. 16 of the RHC to ask for the declarations. Faced with these two rival contentions it is useful at the outset to examine the legal principles governing the power of the Court to grant a declaratory order.

It may be useful to trace the legal development of a declaratory action. In 1852 the Court of Chancery Procedure Act of England was enacted and it was provided in s. 50 thereof that no suit should be open to objection on the ground that a mere declaratory decree or order was sought, and it would be lawful for the Court to make binding declarations of right without granting consequential relief.

In 1859 the said s. 50 of the Court of Chancery Procedure Act was transplanted to India under s. 15 of the Code of Civil Procedure enacted in the same year which stood as follows:

> No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Civil Courts to make binding declarations of right without granting consequential relief.

The Code of 1859 was repealed by the Indian Code of Civil Procedure 1877 and the provisions as to declaration decrees were transferred to s. 42 of the Indian Specific Relief Act 1877. The terms of s. 42 were not a precise reproduction of the provisions contained in the Code of 1859 and the said terms were expressed as follows:

> Any person entitled to any legal character or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief. Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title omits to do so.

In Malaysia the declaratory power of the Court was provided firstly under s. 41 of our Specific Relief Act 1950 which is a facsimile of s. 42, now s. 34, of the Indian Specific Relief Act, and secondly under O. 25 r. 5 of our old Rules of the Supreme Court 1957 which was in *pari materia* with the same English Rule providing for declaratory power of the Court under their Rules of the Supreme Court 1883 which reads:

O. 25 r. 5:

> No action or proceeding shall be open to objection on the ground that merely a declaratory judgment or order is sought thereby and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not.

The words "whether any consequential relief is or could be claimed or not" - the only substantial difference between this rule and s. 50 of the Chancery Procedure Act 1852 - were clearly intended to allow declarations to be made - where no relief was available. By this, an innovation of a very important kind was introduced - see *Ellis v. Duke of Bedford* [1899] 1 Ch. 494 at 514 per Lindley MR. The new rule was

made in negative form and did not lay down any limits as to the declaratory power of the Court or any principles governing the exercise of it. In consequence, the extent to which this power was to be exercised was largely left to the discretion of the Court and it was, at least in England, favourably exercised right up to the early 20th century. Thus in the famous case of *Dyson v. Attorney General* [1911] 1 KB 410 certain notices, commonly known as Form 4, were issued by the Commissioners of Inland Revenue under the Finance Act (1909-1910) of England requiring the plaintiff to make certain returns. The plaintiff alleged that the notices were unauthorised and illegal and sued the Attorney General for a declaration to this effect. It should be observed that no right of the plaintiff was or was threatened to be infringed and that the declaration was not asked for to ascertain any of his rights but merely to establish in a negative way that he was under no obligation to comply with the notice - indeed he had no cause cf action in the conventional sense. In allowing the declaration FletcherMoulton LJ said at p. 421:

> I think that an action thus framed is the most convenient method of enabling the subject to test the justifiability of proceedings on the part of permanent officials purporting to act under statutory provisions. Such questions are growing more and more important and I can think of no more suitable or adequate procedures for challenging the legality of such proceedings.

The principle enunciated in *Dyson's* case was applied in *Guaranty Trust Co. of New York v. Hannay & Co.* [1915] 2 KB 536. There the plaintiffs were in a similar position to that of the plaintiff in the *Dyson's* case that is to say they too were asking for a declaration that they were not obliged to refund sums paid to them by the defendants in respect of forged bills of lading. In other words the plaintiff there too had no cause of action in the traditional sense that is to say a cause of action upon which executory relief could be granted. The Court, however, decided by a majority (Pickford LJ; Bankes LJ; Buckley LJ dissenting) that it had jurisdiction to grant a declaration in the circumstances as stated by Pickford LJ at p. 562:

> ... the effect of the rule is to give a general power to make a declaration whether there be a cause of action or not and at the instance of any party who is interested in the subject matter of the declaration.

Bankes LJ, however, injected a word of caution when he opined that although a cause of action was not necessary nevertheless:

> It is essential ... that a person who seeks to take advantage of the rule must be claiming for relief, and The claim for a declaration is **not** in itself a claim for relief.
> (Emphasis supplied).

What does the word "relief " mean? The learned author, I. Zamir, in his textbook on **Declaratory Judgment** attempted to explain the meaning of this word (see p. 15):

> Probably all that he (Bankes LJ) meant was that a declaration could not be claimed for a mere sake of satisfying the curiousity of the plaintiff as to his rights but should only be claimed to relieve the plaintiff from a real difficulty, or in other words, for some useful purpose.

The learned author backed up his proposition with the judgment of the House of Lords delivered in the case of *Russian Commercial and Industrial Bank v. British Bank for Foreign Trade Ltd.* [1921] 2 AC 438 where the House sanctioned a declaration given by the lower Court even though that Court had no power to grant consequential relief had such relief been asked for. It was suggested that the declaration was sanctioned as it would serve a useful purpose.

Now it is to be observed that when the learned author suggested that a declaration "should only be claimed to relieve the plaintiff from a real difficulty or ... for some useful purpose," it is to my mind more probable than not that what the learned author had in mind is not a real difficulty faced only by an individual or a useful purpose which would serve only an individual but rather a real difficulty faced by or a useful purpose beneficial to members of the public at large put in a similar situation. Thus expressed, his opinion comes into line with the instances cited by him on the declaratory power of the Court. However that may be, the Courts in England, at least, acknowledge the great efficiency of the declaratory judgment and incline to hold the view that the jurisdiction to grant declarations is extremely wide. It was therefore stated in *Hanson v. Radcliffe Urban District Council* [1922] 2 Ch. 490 @ 503:

> The power of the Court to make a declaration ... is now almost unlimited. I might say only limited by its own discretion.

The Privy Council, however, adopted a more cautious approach in *Ibeneweka v. Eqbuna* [1964] 1 WLR 219 @ 225 where Viscount Radcliffe in giving the decision of the Privy Council said:

> ... the power to grant a declaration should be exercised **with a proper sense of responsibility and a full realisation that judicial pronouncements ought not to be issued unless there are circumstances that call for their making.** Beyond that there is no legal restriction on the award of a declaration. (Emphasis is mine).

The aforementioned passage of Viscount Radcliffe's judgment in *Ibeneweka's* case was cited in *Datuk Syed Kechik v. Government of Malaysia* [1979] 2 MLJ 101 @ 107 by Lee Hun Hoe CJ (Borneo) (as he then was) where His Lordship went on to say:

> In granting a declaration the Court has to consider the utility of the declaration claimed and the usefulness of the declaration on the one hand as against the inconvenience and embarrassment that may result on the other hand.

It is to be noted that all the English and Malaysian cases cited above involve the declaratory jurisdiction of the Court, the basis of which was O. 25 r. 5 of the English Rules of Supreme Court and the same rule appearing in our then Rules of Supreme Court 1957. But the provisions of the old O. 25 r. 5 have been imported word for word into the present O. 15 r. 16 of the RHC. It follows therefore what has been stated regarding the scope of the old O. 25 r. 5 can equally apply to the present O. 15 r. 16 subject, however, to any statutory provisions limiting the power of the Court to grant declaratory orders.

I now revert to the matter of s. 41 of the Specific Relief Act 1950. It is useful first of all to refer to two Indian cases regarding the scope of s. 42 (now s. 34) of the Indian Specific Relief Act which is the precursor of s. 41 of our 1950 Act. The first case is *Fischer v. Secretary of State of India* [1899] 26 IA 16 (PC) where the Judicial Committee of the Privy Council held that s. 42 of the Indian Specific Relief Act 1877 could not apply to the declaration sought in that case and that the said declaration was governed by the general provisions of the Civil Procedure Code like O. 7 r. 7. The second case is *Ramaraghava Reddy v. Seshu Reddy* [1967] AIR SC 436 where Ramaswami J. after reviewing the Indian case law on the matter of declaratory power of the Court opined that:

> In our opinion s. 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the Courts have power to grant such a decree **independently** of the requirements of that section.
> (Emphasis is mine).

In Malaysia our Courts too adopted a similar stand. Thus in *Tan Sri Haji Othman Saat v. Mohamed bin Ismail* [1982] 2 MLJ 177 it has been made clear that s. 41 of the Specific Relief Act 1950 is not exhaustive of declaratory relief and a declaration can be sought and made under O. 15 r. 16. This decision of Abdoolcader J. (as he then was) was approved by the Supreme Court in *Government of Malaysia v. Lim Kit Siang* [1988] 2 MLJ 12.

From the above discussions I have no doubt at all that the first contention of the Counsel for the defendants cannot be sustained.

I shall now turn to the alternative issue raised by the learned Counsel for the defendants *viz*: the plaintiffs have no right to ask for the declaratory order on the ground that they are not asking the same for the benefit of either PPP or its members. This action is the plaintiffs' personal action and not a representative action and PPP is not made a party to it. More importantly the learned Counsel stressed that the 1st plaintiff is now a bankrupt and a receiving order had been made against him. He is an undischarged bankrupt and has no right to pursue this action.

On the matter of this action being a non-representative action and as such the plaintiffs having no right to institute the same the learned Counsel relies on the case of *Coffer v. National Union of Seamen* [1929] 2 Ch. 58 where it has been held that as a trade union has a legal entity and is governed by its rules, any irregularities alleged to have been committed in the convening and conduct of its meeting, can be regularized by the passing of fresh and effective resolutions. A Court of law will not entertain any proceedings to restrain by injunction the doing of an act of the trade union to pass a resolution unless such proceedings are brought by the majority of the members and **in the name of the trade union itself.** Counsel for the plaintiffs, on the other hand, relied strongly on *John v. Ress & Ors.* [1969] 2 All ER 274 where the plaintiff claimed as representing all members of the

Penbrokeshire Divisional Labour Party, (except the defendants), and on his own behalf for certain declarations. This claim was asserted in the plaintiffs' writ. In support of his claim over 20 affidavits were filed by those who associated themselves with the defendants in suggesting that as a result of the meeting of the Penbrokeshire Division of the Labour Party ("PDLP") held on 6 April 1968 in which 100 members attended, the PDLP had disaffliated itself from the Labour Party and that a new set of officers, who supported the disaffiliation, were validly elected to office in PDLP. As a result these 20 deponents stated in common form that they would not wish to be represented by the plaintiff in the action. There is therefore a division of opinion between the plaintiff and those he claimed to represent. Under the circumstances Megarry J held that the rule (O. 15 r. 12(1)) as to representative proceedings should be treated as being not a rigid matter of principle but a flexible tool of convenience in the administration of justice, and should be applied, not in any strict or rigourous sense but according to its wide and permissive scope (see p. 283 of the reported case). Be that as it may it has, however, been stated in *Markt & Co. Ltd. v. Knight S S. Co. Ltd.* [1910] 2 KB pp. 1033, 1034 that the class of persons sought to be represented must be defined in the writ with sufficient clearness and precision. It may also be necessary to define the persons sought to be represented by reference to the date on which the cause of action arose in respect of which the claim is brought (see *Campbell v. Thomson* [1953] 1 QB 445).

A cursory reading of the plaintiffs' statement of claim is sufficient to convince me that there is nothing in it to indicate that this action was instituted as a representative action. This is clearly shown in paragraph 1 of the plaintiffs' statement of claim in which the plaintiffs aver that they are members of the PPP and they are chairman and secretary of the Johore State branch of PPP respectively. In addition to that the 1st plaintiff avers that he was and still is the Vice-President and the 2nd defendant (this I think should be read as the 2nd plaintiff) was co-opted to the Central Executive Committee of the PPP. Furthermore prayer (vii) in which the 1st plaintiff makes a request to be "appointed to attend to the day to day affairs of the Peoples' Progressive Party of Malaysia under the supervision of the Registrar of Societies or such other person or persons as may be appointed by the said Registrar of Societies" is indicative that both the plaintiffs were in fact taking advantage of this action to urge this Court to appoint the 1st plaintiff as President of PPP to administer the party's affairs. There is no doubt that the 1st plaintiff being a bankrupt, can no longer rely on the said prayer to ask that he be appointed as administrator of the affairs of PPP nonetheless in considering the frame of mind of the plaintiffs in instituting this action at the material time I cannot ignore this prayer. In any event bearing in mind that the parties are bound by their pleadings I do not see how it could be said that this action is not in fact the plaintiffs' personal action. To my mind what the plaintiffs did was merely to utilise their position as members of PPP and their official position to sustain their standing to sue. Counsel for the plaintiffs, however, argued *inter alia* that a breach of the constitution of PPP is not a personal matter of the officials or its members but of public law. It may well be so and the plaintiffs may well be within their own rights as a members of PPP to file this suit. But the filing of the suit *per se* does not change this personal action into a representative action particularly when the plaintiffs themselves do not deem it fit to aver in their statement of claim that they are suing on their own behalf and on behalf of the remaining members of PPP save the 11 members of PPP who are the defendants in this action. The effect of this finding would be this: even assuming that I am prepared to grant the declarations sought for by the plaintiffs such declarations would not be binding on PPP itself or any of the remaining members of PPP who are not parties to this action.

Even assuming that I am wrong in arriving at the aforesaid finding there is still another issue raised by Counsel for the defendants which I have to consider namely whether this Court has jurisdiction to grant the declarations prayed for in view of s. 16 of the Societies Act 1966 which provides *inter alia* that disputes regarding the proper appointment of the lawful office bearers of the society should be dealt with by the Registrar of Societies. Counsel for the plaintiffs, however, submitted that the issues in this case are matters of public concern and are matters for which the Societies Act regulates and the Registrar has a public duty. This duty in a situation of conflict of interest or legal uncertainty can only be resolved by the guidance of the Court's declaration which the plaintiffs are seeking and **they must not be shut out.**

Bearing in mind the discussions stated earlier it would appear that the dicta of Lord Sterndal MR in *Hanson's* case *(supra)* attempted to emphasise the vast and apparently unexhausted potentialities of declaratory relief. Be that as it may, it is my considered opinion that the potentialities should not, however, be taken to mean that the Courts can make declarations on any matter whatsoever. As Joyce J. said in *North Estern Marine Engineering Co. v. Leeds Forge Co.* [1906] 1 Ch. 324 @ 328:

> To the operation of that rule (i.e. O. 25 r. 5) there must ... be some limitations. It cannot, I think, compel the Court to entertain any and every action for a declaration and it cannot be that a claim for any declaration whatsoever it may be is a good ground of action.

One of those limits is that the jurisdiction of the Court to make declaratory orders may be restricted or ousted by statutory provisions giving exclusive jurisdiction to another person or tribunal in specified matters. Thus Zamir in his book on **The Declaratory Judgment** said at p. 32:

> The declaratory jurisdiction may, accordingly, be described as follows: within the limits of the general jurisdiction of the Courts and **subject to private statutory provisions**, the Courts may, in their discretion, make declarations upon any matter whatsover.
> (Emphasis is mine).

It is also mentioned in the Supreme Court Practice 1988 under Order 15/16/4 entitled "Where jurisdiction exists in other tribunals" that:

> But there is nothing in this rule which enables the Court to make a declaration in a matter in which its jurisdiction is excluded by a statute which gives exclusive jurisdiction to another tribunal ...

Upon a careful reading of the Societies Act 1966 I am fully satisfied that the legislators of the said Act intended to confer on the Registrar of Societies full power to deal with matters concerning the function and the administration of societies - including the appointment of office bearers of societies, as well as disputes arising between members of a society and its office bearers subject only to the supervisory power of the Minister for the time being charged with the responsibility of the registration of societies.

Now s. 16 talks of disputes arising "among members or office bearers of a registered society as a result of which the Registrar is not satisfied of the identity of the persons who have been properly constituted as office bearers of the society the Registrar may give notice requiring the society, within one month of the service of such notice to produce to him evidence of the settlement of any such dispute of and the proper appointment of the lawful office bearers of the society or of the institution of proceedings for the settlement of such dispute". It is clear to me that this section provides for the Registrar to require the parties to satisfy him among other things **the proper appointment of the lawful office bearers** of the PPP. If the Registrar is not so satisfied he should give the PPP the required notice directing that PPP should submit to him evidence of the proper appointment of the office bearers of PPP. If such evidence is not forthcoming or if such evidence so produced is insufficient to satisfy him that the appointments of the office bearers are properly done according to the rules of the PPP within the specified time he has power to cancel the registration of PPP. This is, to my mind, a sensible way to settle any dispute of such a nature for no reasonable person would take the risk of being improperly appointed and causing the registration of the party itself (let alone his post as office bearer) be dissolved.

Nobody would gain by such a dissolution. That being the case this hypothetical person would certainly comply with the notice of the Registrar and take steps to settle the dispute amicably rather than taking the risk of having the society dissolved. I should also mention that the said s. 16 uses the words "or of the institution of proceedings of the settlement of such dispute." To my mind the institution of proceedings does not mean the instituting of legal proceedings - it merely means the instituting of any act or acts to settle the disputes. If it were otherwise that sentence in which the said words are used will be out of context with all the other provisions of the Societies Act which policy is to confine matters regarding the registration, administration, and function of societies, to the Registrar of Societies.

For the above reasons I hold that this Court has no jurisdiction to grant the three declarations sought by the plaintiffs in their statement of claim. In any event even should I have the jurisdiction to make the declarations sought I would be slow in exercising my discretion to grant the declarations since by virtue of the Societies Act 1966, the proper forum to deal with

the issues raised in this action is the Registrar of Societies. In the result the two consequential prayers *viz:*

(i) an order to restrain each and everyone of the defendants from acting or holding out as office bearers and/or interfering with the affairs and/or from convening any meetings or extra-ordinary triennial delegates conference of the PPP; and

(ii) the day to day affairs of PPP be under the supervision of the Registrar etc.

also cannot be entertained.

The disputes set out in this action must be referred to the Registrar of Societies for his necessary action. As there is no longer any relief existing in this action, the writ and the statement of claim herein is rendered a nugatory and as such they must be removed from the Court file and I so order. On the question of costs one thing bothers me and that is the delay on the part of the defendants in raising the issues set out in this judgment. They should have raised the said issues if not before the trial of this case at least at the commencement of the trial. Instead they have caused the plaintiffs to incur unnecessary expenses in proceeding with the trial. For this reason I order each party to bear their own costs. The injunction granted by me to the plaintiffs is hereby revoked.

To conclude this judgment I think it is appropriate to mention that Salmon LJ is said to have stated in *Blackburn v. Attorney-General* [1971] 1 WLR 1037 that he deprecated "litigations the purpose of which is to influence political decisions". His Lordship appears to hold the view that as a politician the respondent's remedy in the matter does not lie with the Court but with Parliament and the electorate. This view has been cited with approval by our Supreme Court in *Lim Kit Siang's* case *(supra).*

Finally I should also mention that an amendment *vide* Act 743/90 was made to the Societies Act 1950 by introducing Part IA entitled "Provisions Applicable To Political Parties Only" and the amendment came into force on 12 January 1990. The amendment has the effect of confining disputes arising from the election of disqualified persons as office bearers of a political society within the said party itself. In short it is for the political party itself to settle such disputes. Although the amendment was made after the institution of this action and is not applicable to this action as it has not been made retrospectively nonetheless the amendment acknowledges the common sense rule adopted by the Court even before the amendment was made i.e. that the remedy of a politician involved in a dispute with the fellow members of his party lies not with the Court but with the Registrar of Societies or the electorate of his party.